



General Assembly

Amendment

February Session, 2006

LCO No. 4159

SB0003104159SD0

Offered by:

SEN. CRISCO, 17th Dist.

REP. O'CONNOR, 35th Dist.

To: Subst. Senate Bill No. **31**

File No. 259

Cal. No. 211

"AN ACT CONCERNING CAPTIVE INSURANCE COMPANIES."

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- 1 In line 23, after "group" insert "that is domiciled in this state and"
- 2 Strike sections 8 and 9 in their entirety and substitute the following
- 3 in lieu thereof:
- 4 "Sec. 8. (NEW) (*Effective January 1, 2007*) (a) At least once every five
- 5 years, and additionally whenever the Insurance Commissioner
- 6 determines it to be prudent, the commissioner or the commissioner's
- 7 designee shall visit each captive insurance company and thoroughly
- 8 inspect and examine its affairs to ascertain its financial condition, its
- 9 ability to fulfill its obligations and whether it has complied with the
- 10 provisions of sections 1 to 18, inclusive, of this act and any applicable
- 11 provisions of title 38a of the general statutes.
- 12 (b) In scheduling and determining the nature, scope and frequency
- 13 of such examinations, the commissioner shall consider such matters as
- 14 the results of financial statement analyses and ratios, changes in

15 management or ownership, actuarial opinions, reports of independent
16 certified public accountants and such other criteria as set forth in the
17 examiners' handbook adopted by the National Association of
18 Insurance Commissioners and in effect at the time the commissioner
19 exercises discretion under this section.

20 (c) (1) To carry out examinations under this section, the
21 commissioner may appoint, as examiners, one or more competent
22 persons, not officers of or connected with or interested in any
23 insurance company, other than as a policyholder. The commissioner
24 may engage the services of attorneys, appraisers, independent
25 actuaries, independent certified public accountants or other
26 professionals and specialists to assist in conducting the examinations
27 under this section as examiners, the cost of which shall be borne by the
28 company which is the subject of the examination.

29 (2) In conducting the examination, the commissioner, the
30 commissioner's actuary or any examiner authorized by the
31 commissioner may examine, under oath, the officers and agents of
32 such a company and all persons deemed to have material information
33 regarding the company's property or business. Each such company, its
34 officers and agents shall produce the books and papers, in its or their
35 possession, relating to its business or affairs, and any other person may
36 be required to produce any book or paper, in his custody, deemed to
37 be relevant to such examination, for the inspection of the
38 commissioner, the commissioner's actuary or examiners, when
39 required. The officers and agents of the company shall facilitate the
40 examination and aid the examiners in making the same so far as it is in
41 their power to do so. The refusal of any company, by its officers,
42 directors, employees or agents, to submit to examination or to comply
43 with any reasonable written request of the examiners shall be grounds
44 for suspension of, or refusal of or nonrenewal of any license or
45 authority held by the company to engage in an insurance or other
46 business subject to the commissioner's jurisdiction. Any such
47 proceedings for suspension, revocation or refusal of any license or
48 authority shall be conducted pursuant to section 9 of this act.

49 (3) In conducting the examination, the examiner shall observe those
50 guidelines and procedures set forth in the examiners' handbook
51 adopted by the National Association of Insurance Commissioners. The
52 commissioner may also adopt such other guidelines or procedures as
53 the commissioner may deem appropriate.

54 (d) (1) Nothing contained in this section shall be construed to limit
55 the commissioner's authority to terminate or suspend any examination
56 in order to pursue legal or regulatory action pursuant to the insurance
57 laws of this state. Findings of fact and conclusions made pursuant to
58 any examination shall be prima facie evidence in any legal or
59 regulatory action.

60 (2) Nothing contained in this section shall be construed to limit the
61 commissioner's authority in such legal or regulatory action to use and,
62 if appropriate, to make public any final or preliminary examination
63 report, any examiner or company workpapers or other documents, or
64 any other information discovered or developed during the course of
65 any examination.

66 (3) Not later than sixty days after completion of the examination, the
67 examiner in charge shall file, under oath, with the Insurance
68 Department a verified written report of examination. Upon receipt of
69 the verified report, the Insurance Department shall transmit the report
70 to the company examined, together with a notice which shall afford
71 the company examined a reasonable opportunity, not to exceed thirty
72 days, to make a written submission or rebuttal with respect to any
73 matters contained in the examination report. Not later than thirty days
74 after the period allowed for the receipt of written submissions or
75 rebuttals, the commissioner shall fully consider and review the report,
76 together with any written submissions or rebuttals and any relevant
77 portions of the examiner's workpapers and enter an order: (A)
78 Adopting the examination report as filed or with modification or
79 corrections. If the examination report reveals that the company is
80 operating in violation of any law, regulation or prior order of the
81 commissioner, the commissioner may order the company to take any

82 action the commissioner considers necessary and appropriate to cure
83 such violation; or (B) rejecting the examination report with directions
84 to the examiners to reopen the examination for purposes of obtaining
85 additional data, documentation or information, and refiling pursuant
86 to subparagraph (A) of this subdivision; or (C) calling for an
87 investigatory hearing with no less than twenty days notice to the
88 company for purposes of obtaining additional documentation, data,
89 information and testimony.

90 (e) (1) All orders entered pursuant to subdivision (3) of subsection
91 (d) of this section shall be accompanied by findings and conclusions
92 resulting from the commissioner's consideration and review of the
93 examination report, relevant examiner workpapers and any written
94 submissions or rebuttals. The findings and conclusions, which form
95 the basis of any such order of the commissioner, shall be subject to
96 review as provided in section 38a-19 of the general statutes.

97 (2) Any investigatory hearing conducted under subparagraph (C) of
98 subdivision (3) of subsection (d) of this section by the commissioner or
99 authorized representative, shall be conducted as a nonadversarial
100 confidential investigatory proceeding as necessary for the resolution of
101 any inconsistencies, discrepancies or disputed issues apparent (A)
102 upon the filed examination report, (B) raised by or as a result of the
103 commissioner's review of relevant workpapers, or (C) by the written
104 submission or rebuttal of the company. Not later than twenty days
105 after conclusions of any such hearing, the commissioner shall enter an
106 order pursuant to subparagraph (A) of subdivision (3) of subsection
107 (d) of this section. The commissioner shall not appoint an examiner as
108 an authorized representative to conduct the hearing. The hearing shall
109 proceed expeditiously with discovery by the company limited to the
110 examiner's workpapers which tend to substantiate any assertions set
111 forth in any written submission or rebuttal. The commissioner or the
112 commissioner's authorized representative may issue subpoenas for the
113 attendance of any witnesses or the production of any documents
114 deemed relevant to the investigation whether under the control of the
115 department, the company or other persons. The documents produced

116 shall be included in the record and testimony taken by the
117 commissioner or the commissioner's authorized representative shall be
118 under oath and preserved for the record. Nothing contained in this
119 section shall require the department to disclose any information or
120 records which would indicate or show the existence or content of any
121 investigation or activity of a criminal justice agency. The hearing shall
122 proceed with the commissioner or the commissioner's authorized
123 representative posing questions to the persons subpoenaed. Thereafter
124 the company and the Insurance Department may present testimony
125 relevant to the investigation. Cross-examination shall be conducted
126 only by the commissioner or the commissioner's authorized
127 representative. The company and the Insurance Department shall be
128 permitted to make closing statements and may be represented by
129 counsel of their choice.

130 (f) The commissioner may, if the commissioner's deems it in the
131 public interest, publish any such report, or the result of any such
132 examination contained in such report, in one or more newspapers of
133 the state.

134 (g) Nothing contained in this section shall prevent or be construed
135 as prohibiting the commissioner from disclosing the content of an
136 examination report, preliminary examination report or results, or any
137 matter relating to such report, to the Insurance Department of this or
138 any other state or country, or to law enforcement officials of this or any
139 other state or to any agency of the federal government at any time,
140 unless such agency or office receiving the report or matters relating to
141 such report agrees, in writing, that such documents shall be
142 confidential.

143 (h) All working papers, recorded information, documents and
144 copies thereof produced by, obtained by or disclosed to the
145 commissioner or any other person in the course of an examination
146 made under this section shall be confidential, shall not be subject to
147 subpoena and shall not be made public by the commissioner or any
148 other person, except to the extent provided in subsection (g) of this

149 section. Access to such information may be granted by the
150 commissioner to the National Association of Insurance
151 Commissioners, unless it agrees, in writing, that such information shall
152 be confidential.

153 (i) (1) The commissioner may engage the services of, from time to
154 time, on an individual basis, qualified actuaries, certified public
155 accountants or other similar individuals who are independently
156 practicing their professions, even though said persons may, from time
157 to time, be similarly employed or retained by persons subject to
158 examination under this section.

159 (2) No cause of action shall arise nor shall any liability be imposed
160 against the commissioner, the commissioner's authorized
161 representatives or any examiner appointed by the commissioner for
162 any statements made or conduct performed in good faith while
163 carrying out the provisions of this section.

164 (3) No cause of action shall arise, nor shall any liability be imposed
165 against any person for the act of communicating or delivering
166 information or data to the commissioner or the commissioner's
167 authorized representative examiner pursuant to an examination made
168 under this section, if such act of communication or delivery was
169 performed in good faith and without fraudulent intent or the intent to
170 deceive.

171 (4) This section does not abrogate or modify in any way any
172 common law or statutory privilege or immunity heretofore enjoyed by
173 any person identified in subdivision (2) of this subsection.

174 (5) A person identified in subdivision (2) of this subsection shall be
175 entitled to an award of attorney's fees and costs if he is the prevailing
176 party in a civil cause of action for libel, slander or any other relevant
177 tort arising out of activities in carrying out the provisions of this
178 section and the party bringing the action was not substantially justified
179 in doing so. For purposes of this section, a proceeding is "substantially
180 justified" if it had a reasonable basis in law or fact at the time that it

181 was initiated.

182 Sec. 9. (NEW) (*Effective January 1, 2007*) (a) The commissioner may,
183 at any time, for cause, suspend, revoke or refuse to renew any license
184 of a captive insurance company or in lieu of or in addition to
185 suspension or revocation of such license the commissioner, after
186 reasonable notice to and hearing of any holder of such license, may
187 impose a fine not to exceed ten thousand dollars. Such hearings may
188 be held by the commissioner or any person designated by the
189 commissioner.

190 (b) Any captive insurance company aggrieved by the action of the
191 commissioner in suspending, revoking, or refusing to renew a license
192 or in imposing a fine may appeal therefrom, in accordance with the
193 provisions of section 4-183 of the general statutes, except venue for
194 such appeal shall be in the judicial district of New Britain. Appeals
195 under this section shall be privileged in respect to the order of trial
196 assignment."

197 Strike lines 524 to 527, inclusive, in their entirety and reletter the
198 remaining subsection accordingly

199 Strike section 15 in its entirety and substitute the following in lieu
200 thereof:

201 "Sec. 15. (NEW) (*Effective January 1, 2007*) Except as otherwise
202 provided in sections 1 to 18, inclusive, of this act, no provision of title
203 38a of the general statutes shall apply to captive insurance companies,
204 unless expressly included therein, and except for the following:
205 Sections 38a-16, 38a-17, 38a-55, 38a-56, 38a-57, 38a-59, 38a-69a, sections
206 38a-250 to 38a-266, inclusive, sections 38a-903 to 38a-961, inclusive, and
207 sections 38a-962 to 38a-962j, inclusive, of the general statutes."

208 Strike section 16 in its entirety and renumber the remaining sections
209 and internal references accordingly